

Docket No. 98-17024

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GERALD ARMSTRONG,

Plaintiff-Appellant,

v.

**CHURCH OF SCIENTOLOGY INTERNATIONAL; and
RELIGIOUS TECHNOLOGY CENTER,**

Defendants-Appellees.

**MOTION OF DEFENDANTS-APPELLEES RELIGIOUS
TECHNOLOGY CENTER AND CHURCH OF SCIENTOLOGY
INTERNATIONAL TO DISMISS APPEAL UNDER THE
FUGITIVE DISENTITLEMENT DOCTRINE**

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TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGE</u>
Table of Authorities	ii
Relief Requested	1
Summary of Argument	1
Background and Procedural History	2
Argument	5
Conclusion	15

TABLE OF AUTHORITIES

<u>CASE</u>	<u>PAGE(S)</u>
<i>Ali v. Sims</i> , 788 F.2d 954 (3d Cir. 1986)	7
<i>Arvey v. State of Nevada</i> , 94 Nev. 566 (1987)	13
<i>Broadway v. City of Montgomery</i> , 530 F.2d 657 (5th Cir. 1976)	6
<i>Closset v. Closset</i> , 71 Nev. 80 (1955)	13
<i>Conforte v. Commissioner</i> , 692 F.2d 587 (9th Cir. 1982)	5, 6
<i>Copren v. State Bar</i> , 64 Nev. 364, 183 P.2d 833 (1947)	12
<i>Daccarett-Ghia v. C.I.R.</i> , 70 F.3d 621 (D.C. Cir. 1996)	8
<i>Degen v. United States</i> , 517 U.S. 820 (1996)	Passim
<i>Erie R. Co. v. Tompkins</i> , 304 U.S. 64 (1938)	12
<i>Fox v. Chase Manhattan Corp.</i> , 11 Del. J. Corp. L. 888, 891 (Del. Ch., Dec. 6, 1985)	12
<i>Funfar v. Superior Court</i> , 107 Cal. App. 488 (Cal. App. 2d Dist. 1930)	14

<i>Griffin v. City of New York Correctional Commissioner</i> , 882 F. Supp. 295 (E.D.N.Y. 1995)	8
<i>Humphries v. Various Federal U.S.I.N.S. Employees</i> , 1999 WL 3420 at *9 (5th Cir. Jan. 21, 1999)	11
<i>In re Prevot</i> , 59 F.3d 556 (6th Cir. 1995), <i>cert. denied</i> , 516 U.S. 1161 (1996)	7, 9
<i>Klaxon v. Stentor Mfg. Co.</i> , 313 U.S. 487 (1941)	13
<i>Knoob v. Knoob</i> , 192 Cal. 95 (1923)	14
<i>MacPherson v. MacPherson</i> , 13 Cal.2d 271 (1939)	14
<i>Magluta v. Samples</i> , 1998 WL 852303 (11th Cir. Dec. 10, 1998)	8
<i>Molinaro v. New Jersey</i> , 396 U.S. 365 (1970)	5, 6, 9, 11
<i>Ortega-Rodriguez v. United States</i> , 507 U.S. 234 (1993)	8-10
<i>Schuster v. United States</i> , 765 F.2d 1047 (11th Cir. 1985)	8
<i>Seibert v. Johnson</i> , 381 F. Supp. 277 (E.D. Okla. 1974)	8
<i>Travis v. Travis</i> , 89 Cal. App.2d 292 (Cal. App. 2d Dist. 1948)	14

United States v. Real Property Located at Incline Village,

47 F.3d 1511 (9th Cir. 1995)

755 F.Supp. 308, 311 (D. Nev. 1990) 6

Relief Requested

By this motion, Religious Technology Center (“**RTC**”) and Church of Scientology International (“**CSI**”), defendants-appellees in the above-entitled action, ask this Court to exercise its authority under the “fugitive disentitlement doctrine” to dismiss the instant appeal. Because plaintiff-appellant Gerald Armstrong (“**Armstrong**”) is a fugitive from justice — having fled from an arrest warrant duly issued by a California court — he should not be permitted to pursue his appeal in this Court.

Summary of Argument

When a fugitive from justice invokes the jurisdiction of the federal courts as a civil plaintiff, the fugitive disentitlement doctrine empowers courts to dismiss the action (here, an appeal from the district court’s dismissal of a fugitive’s (*i.e.*, Armstrong’s) complaint). Invocation of the doctrine is proper here, where Armstrong fled from the California authorities after a bench warrant was issued for his arrest by a California court, and remains a fugitive from justice in that state.

Additionally, as a fugitive from justice from a sister state, comity dictates that Armstrong should be denied access to this Court (acting as a Court of Appeals from a district court sitting in diversity) to pursue his claims. As a matter of comity, a Nevada state court would have refused to hear the complaint

Armstrong brought in the court below. The result should not change in this case merely because Armstrong invoked the diversity jurisdiction of a federal district court.

Background and Procedural History

In December 1986, Armstrong, a former member of the Church of Scientology, entered into a Settlement Agreement with CSI under which Armstrong promised, in relevant part, not to disseminate information concerning CSI and related entities and to refrain from assisting others in pressing claims against those entities, including RTC (which is a Scientology- affiliated corporation). (Declaration of Andrew H. Wilson (“**Wilson Decl.**”) ¶ 4.) In exchange, CSI paid Armstrong the sum of \$800,000. (*Id.* ¶ 4.)

Armstrong subsequently violated the Settlement Agreement and, on October 17, 1995, the Superior Court of California for the County of Marin granted an Order of Permanent Injunction (the “**Injunction**”) (Wilson Decl. Ex. A.) against Armstrong prohibiting him from engaging in any further violations of the Settlement Agreement (*i.e.*, enjoining him from (1) disseminating information concerning CSI and related entities and/or (2) assisting third parties in pressing claims against those entities). The Injunction was subsequently incorporated into a

judgment, which was entered against Armstrong on May 2, 1996 (the “**Judgment**”). (Wilson Decl. Ex. B.)

In January 1997, CSI became aware that Armstrong had sent to the Hon. Ronald M. Whyte, the United States District Judge presiding over three cases in which RTC is the plaintiff, a letter and lengthy declaration disseminating information concerning CSI and its related entities. (Wilson Decl. ¶ 6.) Acting on CSI’s motion, the Hon. Gary W. Thomas of the Marin County, California Superior Court issued an Order to Show Cause Re: Contempt (Wilson Decl. Ex. D), and held a hearing on the matter in May 1997. (Wilson Decl. ¶ 8.) Armstrong did not appear, file any opposition or present any evidence in response to the Order to Show Cause. (*Id.*)

The Marin County Superior Court subsequently entered an Order of Contempt against Armstrong in June 1997. (Wilson Decl. Ex. D.) Thereafter, in August 1997, a bench warrant was issued for Armstrong’s arrest. (Wilson Decl. Ex. E.) Armstrong filed an appeal from the 1996 Judgment, and on December 23, 1997 — with the bench warrant still outstanding and Armstrong having fled the United States — the appeal was dismissed by the California Court of Appeal on the ground that, because he was a fugitive from justice, he should not be permitted to

pursue his appeal. (Wilson Decl. ¶ 5 and Ex. C thereto.) In other words, the California Court of Appeal applied the fugitive disentitlement doctrine and dismissed Armstrong's appeal without considering it on the merits.

Invoking diversity jurisdiction, Armstrong filed the complaint in the instant action on November 24, 1997, seeking damages for alleged libel and defamation of character. (Declaration of N. Patrick Flanagan (" **Flanagan Decl.**"), Ex. A.)¹ On April 20, 1998, RTC and CSI moved to dismiss the complaint on the grounds of, *inter alia*, fugitive disentitlement. (Wilson Decl. ¶ 14.) By Opinion and Order dated July 9, 1998 (Flanagan Decl. Ex. D), the district court rejected the fugitive disentitlement argument, finding that RTC and CSI had not cited sufficient authority for the proposition that the outstanding bench warrant disentitled Armstrong from pursuing his defamation action. On or about July 24, 1998, RTC moved for reconsideration, and included in their motion papers an extensive discussion of the relevant fugitive disentitlement authorities. (Flanagan Decl. Ex. E.) However, before ruling on the motion for reconsideration, the district court

^{1/} Armstrong's complaint originally named David Miscavige, Cathy Norman, the "Sea Organization" and the Church of Scientology of Texas as defendants. By Orders dated July 8 and 14, 1998, each of those defendants was dismissed from the case. (See Flanagan Decl. Exs. B, C.)

dismissed Armstrong's complaint for lack of subject matter jurisdiction. (Flanagan Decl. Exs. F, G.) Armstrong's appeal of that dismissal followed.

Argument

It is well-established that "federal courts . . . have authority to dismiss an appeal . . . if the party seeking relief is a fugitive while the matter is pending." *Degen v. United States*, 517 U.S. 820, 824 (1996). In such situations, the Supreme Court has held that a fugitive is "disentitle[d] . . . to call upon the resources of the Court for determination of his claims." *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970).

Courts "invested with the judicial power of the United States" have always possessed a "certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities." *Degen*, 517 U.S. at 823. In *Molinaro*, the Supreme Court reaffirmed longstanding precedent holding that this inherent authority extends to the discretion to dismiss a criminal appeal where the defendant is a fugitive from justice. 396 U.S. at 395-96. This Court, in *Conforte v. Commissioner*, 692 F.2d 587, 589 (9th Cir. 1982), extended the disentanglement doctrine to civil proceedings, holding that "the rule should apply *with greater force in civil cases* where an individual's liberty is not at

stake.” *Id.* (citing *Broadway v. City of Montgomery*, 530 F.2d 657 (5th Cir. 1976)) (emphasis added). The *Broadway* decision, relied on by this Court in *Conforte*, further clarified the doctrine by articulating that “it is immaterial that the custody from which [the fugitive] fled is that of another sovereign.” 530 F.2d at 659.

Thus, in *United States v. Real Property Located at Incline Village*, 47 F.3d 1511, 1515 (9th Cir. 1995),² this Court affirmed the district court’s reading of the Supreme Court’s opinion in *Molinaro*: “[A]n individual should not be able to call upon the resources of a court to determine his claims when he flouts that court’s power to prosecute him.” *United States v. Real Property at Incline Village*, 755 F.Supp. 308, 311 (D. Nev. 1990).³ Critically, this Court held that “[t]he disentitlement doctrine provides that a fugitive from justice under certain circumstances loses the right to call upon the resources of the court,” *id.* at 1515, thereby recognizing and endorsing precedent holding that a fugitive is not entitled to seek relief in a federal court as a plaintiff in a civil case, even where the party seeking relief has fled the authority of a different sovereign.

^{2/} *Rev’d sub nom on non-relevant grounds*, *Degen v. United States*, 517 U.S. 820 (1996).

^{3/} *Aff’d*, 47 F.3d 1511 (9th Cir. 1995), *rev’d sub nom on non-relevant grounds*, *Degen v. United States*, 517 U.S. 820 (1996).

Numerous cases from other jurisdictions have reached the same result on similar facts. For example, in *In re Prevot*, 59 F.3d 556 (6th Cir. 1995), *cert. denied*, 516 U.S. 1161 (1996), the Sixth Circuit applied the fugitive disentitlement doctrine to bar a fugitive, now living in France, from a Texas state court theft conviction and the Tennessee probation system from bringing suit in Tennessee to regain custody of his children under the International Child Abduction Remedies Act (“ICARA”). In reversing the district court’s finding that the children should be returned to the custody of the fugitive plaintiff, the Sixth Circuit held:

In the present case Mr. Prevot is at large and the Texas court has no way . . . to protect its interest In a practical sense, the only agency with the power to sanction Mr. Prevot is the [Tennessee] district court whose power and authority he himself invoked. Mr. Prevot has flouted the interests of the criminal courts in enforcing his criminal conviction He has misused the Tennessee probation processes He has abused the laudable purposes of ICARA by employing it to further his scheme. His fugitivity, and his actions, constitute abuses to which a court should not accede.

59 F.3d at 567.⁴

^{4/} For cases reaching similar results on similar facts, *see, e.g., Ali v. Sims*, 788 F.2d 954 (3d Cir. 1986) (inmate’s Section 1983 action dismissed where, at time of appeal by non-prevailing defendants, inmate had become fugitive from justice; the Third Circuit reversed a verdict in favor of inmate on other grounds, and would
(continued...)

Although two relatively recent Supreme Court decisions have limited the application of the fugitive disentitlement doctrine, those limitations are not relevant here. In *Ortega-Rodriguez v. United States*, 507 U.S. 234 (1993), the Supreme Court held that where a defendant flees from justice following his conviction *but is apprehended and taken into custody prior to sentencing*, application of the fugitive disentitlement doctrine is improper. 507 U.S. at 251.⁵

4/ (...continued)

have remanded for new trial, but, instead, court dismissed inmate's claim in light of his fugitive status); *Schuster v. United States*, 765 F.2d 1047 (11th Cir. 1985) (taxpayer action in Florida federal court dismissed where taxpayer was fugitive from indictment issued in California); *Griffin v. City of New York Correctional Commissioner*, 882 F. Supp. 295 (E.D.N.Y. 1995) (former inmate's Section 1983 action based on allegedly inadequate medical treatment dismissed where inmate failed to comply with state parole requirements and was therefore deemed a fugitive from justice); *Seibert v. Johnson*, 381 F. Supp. 277 (E.D. Okla. 1974) (state prison inmate's Section 1983 claim dismissed where, two days after bench trial was completed, inmate escaped from prison and became a fugitive).

5/ Although two circuit courts have interpreted *Ortega-Rodriguez* to require a nexus between the defendant's fugitive status and the action where disentitlement is sought, *see Magluta v. Samples*, 1998 WL 852303 (11th Cir. Dec. 10, 1998); *Daccarett-Ghia v. C.I.R.*, 70 F.3d 621 (D.C. Cir. 1996), this reading of the Supreme Court's decision is incorrect. *Ortega-Rodriguez* rejected Eleventh Circuit precedent *mandating* dismissal of actions brought by defendants who had *previously* been fugitives. Specifically, the Court held that "when a defendant's flight and recapture occur before appeal, the defendant's former fugitive status may well lack the kind of connection to the appellate process that would justify an appellate sanction of dismissal." 507 U.S. at 251 (emphasis added). The Court nonetheless reaffirmed that "[t]he contempt for the appellate process manifested by

(continued...)

5/ (...continued)

flight while a case is pending on appeal remains subject to the rule of Molinaro." *Id.* (emphasis added).

Thus, although *Ortega-Rodriguez* required that courts refrain from invoking the fugitive disentitlement doctrine as a sanction for unrelated past behavior, when the defendant *remains* a fugitive from justice, there is no nexus requirement. The Supreme Court's subsequent decision in *Degen, supra*, did not address a nexus requirement, summarizing *Ortega-Rodriguez* only by noting that the *Ortega-Rodriguez* Court "concluded the sanction of disentitlement was unjustified as a sanction applicable to *all* cases where an escape *once had occurred.*" *Degen*, 517 U.S. at 825 (emphasis added). Moreover, the Sixth Circuit, in *In re Prevot, supra*, held that "[i]t does not matter that the court of conviction and the court from whose process the fugitive is excluded are from different sovereigns," 59 F.3d at 566, and distinguished *Ortega-Rodriguez* by noting that in that case "the defendant had been recaptured and was within the power of the district court, which was capable of defending its own jurisdiction by imposing appropriate punishment," while "[i]n the present case Mr. Prevot is at large and the Texas court has no way . . . to protect its interest." Like Mr. Prevot, Armstrong is a fugitive from justice in California, and the California court has no way to protect its interest.

Even if this Court determines that a nexus *is* required, a sufficient relationship exists between Armstrong's fugitive status and his complaint in the court below to satisfy such a requirement. Armstrong was held in contempt for violating the terms of an order which, *inter alia*, prohibited him from assisting third parties in pursuing litigation against CSI and RTC. (Wilson Decl. Ex. D.) In the present action, Armstrong alleges that certain statements concerning his prior relationship with the Church of Scientology, his participation in a prior litigation involving Scientology-related organizations, and his breach of the Settlement Agreement and the resulting Injunction, defamed him. (Flanagan Decl. Ex. A.) Clearly then, both the contempt order (from which Armstrong has fled) and this case flow from Armstrong's contentious relationship with CSI, RTC and other Scientology-affiliated entities. Thus, *his continued fugitive status*, resulting from,

(continued...)

Here, Armstrong remains a fugitive — thus, the holding in *Ortega-Rodriguez* does not apply.

Nor is the Supreme Court's opinion reversing this Court's opinion in *Degen v. United States, supra*, pertinent to the instant case. First, the defendant in *Degen* fled an indictment, not a conviction. Here, by contrast, Armstrong's flight occurred following his contempt conviction and the issuance of a bench warrant. Thus, Armstrong has not merely shown disrespect for the order he was found guilty of violating (*i.e.*, the Injunction), he has flouted the California court's efforts to enforce compliance with its order — *i.e.*, its convicting Armstrong of contempt — by failing to answer a bench warrant for his arrest.

Second, *Degen* held, quite simply, that in light of Fifth Amendment due process concerns, invocation of the disentitlement doctrine to default a fugitive *defendant* in a civil forfeiture action *may* be inappropriate where, as the Court stressed, the district court has other options available to ensure its process and

5/ (...continued)

inter alia, statements Armstrong made about the Church in violation of the Injunction, *and the present litigation*, resulting from statements about Armstrong that were purportedly made by someone allegedly affiliated with CSI and RTC, are related.

orders are effectuated. *See* 517 U.S. at 826-28. In so holding, the Court went out of its way to reaffirm its prior holdings that the doctrine may be properly invoked to bar a fugitive from seeking affirmative relief. *Id.* at 823 (“We have sustained, to be sure, the authority of an appellate court to dismiss an appeal or writ in a criminal matter *when the party seeking relief becomes a fugitive*”) (emphasis added). Further, the *Degen* opinion cogently noted that “we have said an appellant’s escape ‘disentitles’ him ‘to call upon the resources of the Court for determination of *his* claims.’” *Id.* at 824 (emphasis added) (quoting *Molinaro*, 396 U.S. at 366). Thus, although the Supreme Court rejected application of the fugitive disentitlement doctrine against *Degen* because of the due process issues involved in defaulting a *defendant* and subjecting his assets to forfeiture without an opportunity to be heard on the merits, the Court nonetheless reaffirmed longstanding authority that the doctrine is properly applied against a fugitive *plaintiff* seeking affirmative relief from the courts.⁶

In sum, the foregoing authorities counsel dismissal of Armstrong’s

^{6/} *But see Humphries v. Various Federal U.S.I.N.S. Employees*, 1999 WL 3420 at *9, n. 13 (5th Cir. Jan. 21, 1999) (denying motion to dismiss plaintiff’s appeal of civil rights claims on fugitive disentitlement grounds, citing *Degen*, but also citing authority criticizing *Degen* and asking that the case be overruled).

appeal. It cannot be disputed that Armstrong is a fugitive from justice. As such, he should not be permitted to come to this Court as a *plaintiff-appellant*, seeking *affirmative* relief, unless and until he obeys the orders of the California courts.

Moreover, wholly apart from federal fugitive disentitlement authorities discussed *supra*, this Court, sitting in diversity, should apply the doctrine as a matter of comity. Because Armstrong invoked only diversity jurisdiction, the district court sat in the position of a Nevada state court. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78-79 (1938). As such, the district court — and, on appeal, this Court — are obliged to give due respect to the judgments and policies of sister state's courts (*i.e.*, the California state court). *See, e.g., Fox v. Chase Manhattan Corp.*, 11 Del. J. Corp. L. 888, 891 (Del. Ch., Dec. 6, 1985) (“comity . . . demands of this Court due respect for the jurisdiction and processes of the courts of sister states, and vice versa”); *see also Copren v. State Bar*, 64 Nev. 364, 383, 183 P.2d 833, 842 (1947) (affording comity and full faith and credit to a California judgment suspending attorney's license to practice law in that state and holding that the California judgment of suspension properly formed the basis, in part, for suspension of the attorney's Nevada license).

Nevada state substantive law clearly recognizes and endorses the

fugitive disentitlement doctrine. *See, e.g., Arvey v. State of Nevada*, 94 Nev. 566, 567 (1987) (dismissing appeal of defendant who failed to appear and was subject to a bench warrant); *Closset v. Closset*, 71 Nev. 80, 82 (1955) (“We shall not permit [appellant] to avail himself of judicial review while at the same time he places himself beyond reach of the process of the trial court in defiance of its attempts to enforce its judgment”). Thus, because the Nevada state courts (including the district court sitting in diversity⁷) would not allow a fugitive from a Nevada court to bring affirmative claims in Nevada, Armstrong — a fugitive from the authority of sister state’s courts — should, as a matter of comity, have no greater right to assert his affirmative claims in the courts of Nevada. Simply put, if a Nevada state court would invoke the fugitive disentitlement doctrine to preclude a fugitive from a Nevada court from suing in a Nevada court, *a fortiori*, it would not grant access to a fugitive from the courts of a sister state.

It is also beyond dispute that a California court would not allow Armstrong to seek affirmative relief — as either a plaintiff or an appellant — because of his fugitive status. Indeed, a California appellate court has already

⁷/ *See Klaxon v. Stentor Mfg. Co.*, 313 U.S. 487 (1941) (holding that federal district courts sitting in diversity must apply the substantive law of the forum state).

dismissed Armstrong's appeal from the order of permanent injunction precisely because of his flight from that jurisdiction. (Flanagan Decl. ¶ 13 and Ex. C thereto; *see also MacPherson v. MacPherson*, 13 Cal.2d 271 (1939) (a party to action is not entitled to court's aid while standing in contempt of state court's legal orders and processes); *Knoob v. Knoob*, 192 Cal. 95, 96-97 (1923) (dismissing appeal of defendant who fled jurisdiction in violation of child custody order); *Travis v. Travis*, 89 Cal. App.2d 292 (Cal. App. 2d Dist. 1948) (flagrant disobedience of trial court's order and contempt barred plaintiff from seeking appellate review of order entered against him); *Funfar v. Superior Court*, 107 Cal. App. 488, 490-91 (Cal. App. 2d Dist. 1930) (doctrine applied to ban contemnor who sought writ of prohibition barring enforcement of the superior court order against him).)⁸

California would refuse Armstrong access to its courts as a *plaintiff*.

Likewise, a Nevada state court would bar Armstrong from asserting his claims before it. Thus, as a matter of comity, this Court, a Court of Appeal from a district court sitting in the position of another court of the State of Nevada, should not

^{8/} There is, therefore, no conflict between the public policy of California and the public policy of Nevada, and no reason why principles of comity should not apply here.

grant Armstrong "safe harbor" to pursue his appeal while he remains a fugitive from the California courts.

Conclusion

For the reasons stated above, RTC and CSI respectfully submit that their motion to dismiss Armstrong's appeal should be granted.

Dated: February 19, 1999

Respectfully submitted,

HALE, LANE PEEK, DENNISON,
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By: 
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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 GERALD ARMSTRONG,
15 Plaintiff,

CASE NO. CV-N-97-00670 HDM (RAM)

16 vs.

17 **DECLARATION OF ANDREW H.
WILSON IN SUPPORT OF
18 DEFENDANTS' MOTION TO DISMISS
19 COMPLAINT**

17 DAVID MISCAVIGE and CATHY
NORMAN, individuals; CHURCH OF
18 SCIENTOLOGY INTERNATIONAL, a
California corporation; the RELIGIOUS
19 TECHNOLOGY CENTER, a California
corporation; the SEA ORGANIZATION,
20 a California based unincorporated entity;
and the CHURCH OF SCIENTOLOGY
21 OF TEXAS, a Texas corporation,
22

23 Defendants.
24 _____/

25 I, ANDREW H. WILSON declare as follows:
26

27 1. I am a partner in the law firm of Wilson Campilongo, LLP, counsel to defendant
28 Church of Scientology International ("CSI") in the action *Church of Scientology International v. Armstrong*,
Marin County Superior Court Case Nos. 152229 and 157680. I have personal knowledge of the facts set

1 forth below and, if called upon to testify on such matters, would and could do so competently.

2 2. On October 17, 1995, the Superior Court of California for the County of Marin
3 granted an Order of Permanent Injunction against Gerald Armstrong, the Plaintiff in the above-captioned
4 action ("Order"). a true and correct copy of the Order is attached hereto and marked as Exhibit a.

5 3. The Order was subsequently incorporated in a judgment ("Judgment") against
6 Armstrong entered on May 2, 1996. a true and correct copy of the Judgment, to which the Order is an
7 exhibit, is attached hereto and marked as Exhibit B. The Order and the Judgment are collectively referred
8 to hereinafter as the "Injunction."

9 4. The Injunction had the express purpose of permanently enjoining Gerald Armstrong
10 from violating the terms of a December 1986 Settlement Agreement entered into between Armstrong and
11 the Church of Scientology International ("CSI"), by which Armstrong promised, in essence, to cease
12 disseminating information concerning CSI and to cease assisting others pressing claims against CSI and
13 related entities. In exchange, Armstrong received the sum of eight hundred thousand dollars (\$800,000).

14 5. Armstrong's appeal from the judgment was dismissed by the California Court of
15 Appeal on December 23, 1997, on the ground that as a fugitive from justice, Armstrong could not pursue
16 his appeal. a true and correct copy of the California Court of Appeal Order is attached hereto and marked
17 as Exhibit C. The basis for the order of dismissal is more fully described in the following paragraphs. On
18 an earlier appeal by Armstrong, the Court of Appeal had affirmed a preliminary injunction issued by the
19 Superior Court.

20 6. In late January, 1997, I learned of actions by Mr. Armstrong that I believed were
21 clear violations of the Injunction. Armstrong sent to the Hon. Ronald M. Whyte, the United States District
22 Judge presiding over three cases in which the plaintiff is Religious Technology Center ("RTC"), a
23 beneficiary of the Injunction, a letter and lengthy declaration disseminating information denouncing CSI
24 and its related entities.

25 7. This was not Armstrong's first violation of the Injunction. Prior to that, Armstrong
26 repeatedly and wilfully disobeyed the preliminary injunction which preceded the permanent injunction.

27 8. Accordingly, CSI brought a motion for contempt before the Hon. Gary W. Thomas
28 in Marin County Superior Court. The Court issued an Order to Show Cause Re: Contempt on February

1 18, 1997, and an Order Allowing Service of the Order to Show Cause Re: Contempt. a hearing was held
2 on May 23, 1997. Armstrong did not appear, nor did he file any opposition or evidence.

3 9. On June 23, 1997, the Marin County Superior Court entered an Order of Contempt
4 against Armstrong ("Contempt Order") to punish him for his ex parte communication with United States
5 District Judge Ronald M. Whyte. The Contempt Order decreed that Armstrong be punished for contempt
6 by a fine of one thousand dollars (\$1,000) and confinement in the County Jail for a period not to exceed 48
7 hours. a true and correct copy of the Contempt Order is attached hereto and marked as Exhibit D.

8 10. On or about August 6, 1997, the Marin County Superior Court issued a bench warrant
9 for the arrest of Armstrong ("Bench Warrant"). a true and correct copy of the Bench Warrant is attached
10 hereto and marked as Exhibit E.

11 11. On February 11, 1998, the Marin County Superior Court found Armstrong guilty of
12 thirteen additional counts of contempt of its injunction, and imposed an additional sentence upon Armstrong
13 of 26 days in jail and a fine of \$2,600. a true and correct copy of the Court's Order is attached as Exhibit
14 F.

15 12. On or about December 17, 1997, Armstrong filed with the California Court of Appeal
16 a Request for Extension to File Opposition to Motion to Dismiss Appeal ("Armstrong Declaration").
17 Armstrong mailed this request for extension to the Marin County Superior Court Clerk in an attempt to
18 extend his time to file an opposition to CSI's motion to dismiss his appeal in *CSI v. Armstrong* in the
19 California Court of Appeal, First Appellate District, Division Four (Appeal No. A075027). a true and
20 correct copy of the Armstrong Declaration is attached hereto and marked as Exhibit G.

21 13. As indicated by the "care-of" return address on the Armstrong Declaration cover sheet
22 and the envelope in which it was mailed, Armstrong – as of December 15, 1997 – did not have a residential
23 or other address of his own in Nevada.

24 14. As I previously noted (paragraph 5 ante), on December 23, 1997, the Court of Appeal
25 dismissed Armstrong's appeal from the order or permanent injunction on the ground that he is a fugitive
26 from justice. (Exhibit C)

27 15. On or about January 26, 1998, Armstrong filed another declaration in connection with
28 the renewed contempt proceedings then pending before the Superior Court of Marin County. True and

1 correct copies of pages 1, 55 and proof of service of the declaration are attached as Exhibit H.

2 16. On or about April 1, 1998, Armstrong posted a message to an Internet public news
3 group stating, "I have been extremely busy in Canada, and so involved with so many things, that it has not
4 been ultimately timely to move to my next spot. . ." a true and correct copy of the Internet posting is
5 attached as Exhibit I.

6 **Concerning Subject Matter Jurisdiction**

7 17. I am informed and believe that, as of February 14, 1997, plaintiff Gerald Armstrong
8 was living with Lorien Phippany and residing in San Anselmo, California. On that date, I gave Mr.
9 Armstrong notice, by telephone to his residence in San Anselmo, of an ex parte application for the issuance
10 of an order to show cause re: contempt. The telephone was answered by an answering machine that played
11 a recording of the voice of Lorien Phippany that stated, "Please leave a message for either Jerry or Lorien."
12 I called his number again and heard exactly the same message.

13 18. I am informed and believe that at some point after the Contempt Order and Bench
14 Warrant against Armstrong were issued, Armstrong became a fugitive from justice by fleeing California
15 for Canada, where he could not be arrested and prosecuted pursuant to the Bench Warrant and Contempt
16 Order. My belief is based on the fact that on August 25, 1997, he served his opening brief in the appeal by
17 mailing it from Chilliwack, B.C., Canada. a true and correct copy of the Proof of Service for Armstrong's
18 opening appellate brief is attached hereto and marked as Exhibit J.

19 19. On or about December 10, 1997, Armstrong filed a declaration of the same date
20 appended to a request for an extension of time to file

21 45. Also on December 4, I posted to ARS, a message, a
22 true and correct copy of which is appended hereto as Exhibit
23 20, specifically directed to the Scientology organization, in
which I stated:

24 "I explained to [the process served/agent] that I
25 expect to be in Mr. Abbott's office within two
26 weeks, and that when I know that I will be there,
I will call her number and she can come by to
serve me."

27 //

28 //

//

1 I also stated in the December 4 post:

2 "If I don't show up within w weeks, and don't
3 accept service of your papers in Mr. Abbott's
4 office within 2 weeks, you can go wherever you
want to serve me."

5 a true copy of this declaration is attached hereto as Exhibit K. In paragraph 49 of the same declaration,
6 Armstrong makes reference to a letter which he swears was delivered by him to the U.S. Consulate in
7 Vancouver on December 5, 1997. In paragraph 58 of the same declaration, Armstrong provides his
8 "analysis" of why he feels it is necessary for him to live in Canada. (*Id.*)

9 20. On or about December 17, 1997, I received a copy of the Armstrong Declaration to
10 which I previously referred (paragraph 12, ante, and Exhibit G), in which Armstrong stated, in essence, that
11 as of November, 1997, he was still living in Canada. It stated in pertinent part:

12 8. When I received Scientology's motion I was in the process of moving
13 to my new residence in Nevada, and my needed files were divided between
14 Canada and Nevada. *I anticipate completing this move within the next two*
weeks.

15 9. *I am at the time of writing this request for extension in Nevada, and*
16 *will be here four days* in connection with other legal matters. See, e.g.,
17 declaration Exhibit 14, complaint in Gerald Armstrong v. David Miscavige,
18 Scientology, et al., U.S. District Court, District of Nevada, Case No. CV-N-
97-00670-HDM (RAM). In order to complete my opposition, I require my
computer which is in Canada.

19 Exhibit G hereto, ¶ 8-9, emphasis added.

20 21. I mailed a copy of said motion, referred to by Armstrong in his declaration, to
21 Armstrong at his last known residential address in San Anselmo, California in early November, 1997.

22 22. In January, March and April 1998, I caused Sheila M. Werner of Vancouver, British
23 Columbia, Canada to establish contact with Gerry Armstrong by telephone and in person. During this time
24 period, as testified to be Ms. Werner, at Exhibit L, she had contact with Gerry Armstrong on 10 separate
25 occasions. Each time Gerry Armstrong was in Chilliwack, British Columbia. In a personal meeting on
26 April 5, 1998 Gerry Armstrong informed Ms. Werner that he had recently been in Nevada "but that he does
27 not plan to live there and was only there for legal matters."

28 23. On April 15, 1998, in an attempt to determine whether Armstrong has yet acquired
a residence in Nevada, I telephoned information at (702) 555-1212 and inquired as to a listing for Gerald

1 Armstrong in Minden, Nevada, or anywhere within the 702 area code. The operator with whom I spoke
2 informed me there was no such listing. She further informed me that it typically takes two weeks from time
3 of application for a telephone number, for a new listing to appear in the phone company's database.

4 24. On the basis of the aforementioned events, I am informed and believe that at the time
5 of the filing of the complaint in this case and continuing until the present time, Armstrong was still residing
6 in Canada.

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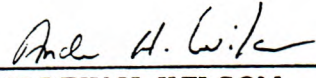
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I declare under penalty of perjury of the laws of the United States and of the State of California that the foregoing is true and correct. Executed this 17th day of April, 1998 at San Francisco, California.



ANDREW H. WILSON

G:\Armstrong\Nevada\wilson.decl.wpd

FILED

OCT 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California not-for-profit
religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through
25, inclusive,

Defendants.

CASE NO. BC 157680

~~PROCESSED~~

GWT. 10/17/95

ORDER OF PERMANENT
INJUNCTION

DATE: October 6, 1995
TIME: 9:00 a.m.
DEPT: 1

TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff Church of Scientology International ("the Church") for Summary Adjudication of the Twentieth Cause of Action of the Second Amended Complaint. Plaintiff Church of Scientology International appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon.

1 defendant Armstrong appeared by his attorney, Ford Greene. Having read and
2 considered the moving and opposing papers, and the evidence and arguments
3 presented therein and at the hearing, and good cause appearing:

4 IT IS ORDERED:

5 The Church's motion for summary adjudication of the twentieth cause of
6 action of the Second Amended Complaint is GRANTED. The Court finds that there
7 is no triable issue of material fact as to any of the following:

8 1. Plaintiff and defendant freely and voluntarily entered into a Mutual
9 Release of All Claims and Settlement Agreement ("Agreement") in December,
10 1986.

11 2. Plaintiff performed all of its obligations pursuant to the Agreement.

12 3. Defendant Armstrong received substantial consideration for the
13 promises which he made in the Agreement.

14 4. Since 1990, defendant Armstrong has repeatedly breached
15 paragraphs 7(D), 7(E), 7(H), 7(G), 10, 18(D) and 20 of the Agreement.

16 5. Between 1991 and the present, Armstrong breached paragraphs 7(G),
17 7(H) and 10 of the Agreement by providing voluntary assistance, exclusive of
18 testimony made pursuant to a valid subpoena, to the following private individuals,
19 each of whom was pressing a claim or engaged in litigation with plaintiff and/or
20 one or more of the designated beneficiaries of the Agreement:

21 * Vicki and Richard Aznaran, anti-Scientology litigants in the case of
22 Vicki Aznaran, et al. v. Church of Scientology International, United States
23 District Court for the Central District of California, Case No. CV 88-1786
24 (JMI) [Sep.St.Nos. 11-16];

25 * Joseph A. Yanny, anti-Scientology litigant in the case of Religious
26 Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior
27 Court No. C 690211 and Religious Technology Center et al. v. Joseph
28 Yanny, et al., Los Angeles Superior Court No. BC 033035 [Sep.St.Nos. 17-

20);

• Malcolm Nothling, anti-Scientology litigant in the matter between Malcolm Nothling and the Church of Scientology in South Africa, Adi Codd, Diane Kemp, Glen Rollins; Supreme Court of South Africa (Witwatzbrand Local Division) Case No. 19221/88. [Sep.St.Nos. 21-24];

• Reader's Digest Corporation, anti-Scientology litigant in the case of Church of Scientology of Lausanne vs. Kiosk AG, Basel, Switzerland [Sep.St.Nos. 25-26];

• Richard Behar, anti-Scientology litigant in the case of Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company and Richard Behar, United States District Court, Southern District of New York, Case No. 92 Civ. 3024 PKL [Sep.St.Nos. 27-28];

• Steven Hunziker, anti-Scientology litigant in the case of Hunziker v. Applied Materials, Inc., Santa Clara Superior Court Case No. 692629 [Sep.St.Nos. 29-33];

• David Mayo, anti-Scientology litigant in the case of Religious Technology Center v. Robin Scott, et al., United States District Court for the Central District of California, Case No. 85-711 [Sep.St.Nos. 34-35];

• Cult Awareness Network, anti-Scientology litigant in the case of Cult Awareness Network v. Church of Scientology International, et al., Circuit Court of Cook County, Illinois, No. 94LB04 [Sep.St.Nos. 38-39];

• Lawrence Wollersheim, anti-Scientology litigant in the cases of Lawrence Wollersheim v. Church of Scientology of California, Los Angeles Superior Court Number C332027 and Church of Scientology of California v. Lawrence Wollersheim, Los Angeles Superior Court Number BC074815 [Sep.St.Nos. 40-42];

• Ronald Lawley, anti-Scientology litigant in the cases of Religious Technology Center, et al. vs. Robin Scott, et al., U.S. District Court, Central

1 District of California, Case No. 85-711 MRP(Bx); Matter Between Church of
2 Scientology Advanced Organization Saint Hill Europe and Africa, and Robin
3 Scott, Ron Lawley, Morag Bellmaine, Stephen Bisbey in the High Court of
4 Justice Queen's Bench Division, Case 1984 S No. 1675; and Matter
5 Between Church of Scientology Religious Education College Inc., and Nancy
6 Carter, Ron Lawley, Steven Bisbey, in the High Court of Justice Queen's
7 Bench Division, Case 1986 C No. 12230 [Sep.St.Nos. 43-44];

8 • Uwe Geertz and Steven Fishman, anti-Scientology litigants in the case
9 of Church of Scientology International v. Steven Fishman, et al., United
10 States District Court for the Central District of California Number 91-6426
11 HLH(Tx) [Sep.St.Nos. 45-46];

12 • Tilly Good, a claimant against the Church of Scientology, Mission of
13 Sacramento Valley [Sep.St.Nos. 36-37];

14 • Denise Cantin, a claimant against the Church of Scientology of Orange
15 County; Church of Scientology of Boston; and Church of Scientology, Flag
16 Service Organization [Sep.St.Nos. 36-37]; and

17 • Ed Roberts, a claimant against the Church of Scientology of
18 Stevens Creek [Sep.St.Nos. 36-37].

19 6. Between 1992 and the present, Armstrong breached paragraph 7(D)
20 of the Agreement by contacting media representatives, granting interviews and
21 attempting to assist media representatives in the preparation for publication or
22 broadcast magazine articles, newspaper articles, books, radio and television
23 programs, about or concerning the Church and/or other persons and entities
24 referred to in paragraph 1 of the Agreement. These media representatives
25 included:

26 • Cable Network News: reporter Don Knapp, in March, 1992
27 [Sep.St.Nos. 47-48];

28 • American Lawyer Magazine: reporter Bill Horne, in March, 1992

1 [Sep.St.No. 49];

2 • Los Angeles Times: reporter Bob Welkos, in May, 1992; and reporter
3 Joel Sappell, in June, 1993 [Sep.St.Nos. 50-51];

4 • CAN Video Interview, with anti-Scientologists "Spanky" Taylor and
5 Jerry Whitfield, in November, 1992 [Sep.St.No. 52];

6 • KFOX Radio: interview planned but prevented in April, 1993
7 [Sep.St.No. 53];

8 • Newsweek Magazine: reporter Charles Fleming, in June, 1993 and
9 August, 1993 [Sep.St.No. 54-56];

10 • Dally Journal: reporter Mike Tipping, in June, 1993 [Sep.St.No. 57];

11 • Time Magazine: reporter Richard Behar, in March, 1992 and in June,
12 1993 [Sep.St.Nos. 58-59];

13 • San Francisco Recorder: reporter Jennifer Cohen, in August, 1993
14 [Sep.St.No. 60];

15 • E! Entertainment Network: reporter Greg Agnew, in August, 1993
16 [Sep.St.No. 61];

17 • WORD Radio: Pittsburgh, Pennsylvania, interviewed in the fall of 1993
18 [Sep.St.No. 62];

19 • St. Petersburg Times: St. Petersburg, Florida, reporter Wayne Garcia,
20 in the fall of 1993 [Sep.St.No. 63];

21 • Premiere Magazine: letter to the editor, in October, 1993 [Sep.St.No.
22 64];

23 • Mirror-Group Newspapers: United Kingdom, in May, 1994
24 [Sep.St.No. 65];

25 • Gauntlet Magazine: New York, New York, reporter Rick Cusick in
26 June, 1994 [Sep.St.No. 66];

27 • Pacific Sun Newspaper: reporter Rick Sine, in June and July, 1994
28 [Sep.St.No. 67];

1 * Disney Cable: reporter Marsha Nix, in August, 1994 [Sep.St.No. 68];
2 and

3 * Tom Voltz: Swiss author writing a book about Scientology, in
4 October, 1994 [Sep.St.No. 69].

5 7. Between 1992 and the present, Armstrong breached paragraph 7(D)
6 of the Agreement by preparing and distributing at least three manuscripts
7 concerning his claimed experiences in and with Scientology, including a treatment
8 for a screenplay which he intends to turn into a film [Sep.St.Nos.70-71].

9 8. Between 1991 and the present, Armstrong further breached
10 paragraph 7(D) of the Agreement by disclosing his claimed experiences in or with
11 Scientology to each of the following persons or groups, not previously identified:
12 Robert Lobsinger [Sep.St.No. 72]; the New York Times [Sep.St.No. 73]; Toby
13 Plevin, Stuart Culter, Anthony Laing, Kent Burtner, and Margaret Singer
14 [Sep.St.No. 74]; Priscilla Coates [Sep.St.No. 75]; Omar Garrison [Sep.St.No. 76];
15 Vaughn and Stacy Young [Sep.St.No. 77]; a Stanford University psychology class
16 [Sep.St.No. 78]; attendees at the 1992 Cult Awareness Network Convention
17 [Sep.St.No. 79]; and Hana Whitfield [Sep.St.No. 80].

18 9. Defendant Armstrong has reiterated numerous times that he intends
19 to continuing breaching the Agreement unless he is ordered by the Court to cease
20 and desist [Sep.St.Nos. 87-97].

21 10. Plaintiff's legal remedies are inadequate insofar as the scope of the
22 relief ordered below is concerned. Tamarind Lithography Workshop, Inc. v. Sanders
23 (1983) 143 Cal.App.3d 571, 577-578, 193 Cal.Rptr. 409, 413.

24 Accordingly, the Court finds that entry of a permanent injunction in this
25 action is necessary in this action because pecuniary compensation could not afford
26 the Church adequate relief, and the restraint is necessary in order to prevent a
27 multiplicity of actions for breach of contract. Civil Code § 3422(1),(3). A ORDER
28 of injunction is therefore entered as follows:

1 Defendant Gerald Armstrong, his agents, employees, and persons acting in
2 concert or conspiracy with him are restrained and enjoined from doing directly or
3 indirectly any of the following:

4 1. Voluntarily assisting any person (not a governmental organ or
5 entity) intending to make, intending to press, intending to arbitrate, or
6 intending to litigate a claim, regarding such claim or regarding pressing,
7 arbitrating, or litigating it, against any of the following persons or entities:

- 8 o The Church of Scientology International, its officers, directors, agents,
9 representatives, employees, volunteers, successors, assigns and legal
10 counsel;
- 11 o The Church of Scientology of California, its officers, directors, agents,
12 representatives, employees, volunteers, successors, assigns and legal
13 counsel;
- 14 o Religious Technology Center, its officers, directors, agents,
15 representatives, employees, volunteers, successors, assigns and legal
16 counsel;
- 17 o The Church of Spiritual Technology, its officers, directors, agents,
18 representatives, employees, volunteers, successors, assigns and legal
19 counsel;
- 20 o All Scientology and Scientology affiliated Churches, organizations and
21 entities, and their officers, directors, agents, representatives,
22 employees, volunteers, successors, assigns and legal counsel;
- 23 o Author Services, Inc., its officers, directors, agents, representatives,
24 employees, volunteers, successors, assigns and legal counsel;
- 25 o The Estate of L. Ron Hubbard, its executor, beneficiaries, heirs,
26 representatives, and legal counsel; and/or
- 27 o Mary Sue Hubbard;

28 (Hereinafter referred to collectively as "the Beneficiaries");

1 2. Voluntarily assisting any person (not a governmental organ or
2 entity) defending a claim, intending to defend a claim, intending to defend an
3 arbitration, or intending to defend any claim being pressed, made, arbitrated
4 or litigated by any of the Beneficiaries, regarding such claim or regarding
5 defending, arbitrating, or litigating against it;

6 3. Voluntarily assisting any person (not a governmental organ or
7 entity) arbitrating or litigating adversely to any of the Beneficiaries;

8 4. Facilitating in any manner the creation, publication, broadcast,
9 writing, filming audio recording, video recording, electronic recording or
10 reproduction of any kind of any book, article, film, television program, radio
11 program, treatment, declaration, screenplay or other literary, artistic or
12 documentary work of any kind which discusses, refers to or mentions
13 Scientology, the Church, and/or any of the Beneficiaries;

14 5. Discussing with anyone, not a member of Armstrong's
15 immediate family or his attorney, Scientology, the Church, and/or any of the
16 Beneficiaries;

17 In addition, it is ORDERED that, within 20 days of the issuance of this Order,
18 Armstrong shall:

19 1. Return to the Church any documents which he now has in his
20 possession, custody or control which discuss or concern Scientology, the
21 Church and/or any person or entity referred to in paragraph 1 of the "Mutual
22 Release of All Claims and Settlement Agreement" of December, 1986, other
23 than documents which have been filed in this litigation.

24 It is further ORDERED that during the pendency of this litigation, documents
25 which have been filed in this litigation may be retained by Armstrong's counsel.
26 These documents are to remain sealed, in the possession of Mr. Greene or any
27 successor counsel, and may not be distributed to third parties. At the conclusion
28 of the instant litigation, it is ORDERED that all documents from this case in

1 counsel's possession which do not comprise counsel's work product will be
2 delivered to counsel for plaintiff. Counsel's work product may be retained by
3 Armstrong's counsel.
4

5 DATED: _____, 1995

6 OCT 17 1995
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GARY W. THOMAS

THE HONORABLE GARY W. THOMAS
SUPERIOR COURT JUDGE

FILED

MAY 02 1996

MARIN COUNTY CLERK
BY: E. Kerwick, Deputy

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12 TELEFAX: (213) 953-3351

13 Attorneys for Plaintiff
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF MARIN

17 BY FAX

18 CHURCH OF SCIENTOLOGY INTERNATIONAL,) CASE NO. 157 680
19 a California not-for-profit)
20 religious corporation;) [CONSOLIDATED]

21 Plaintiff,

22 JUDGMENT

23 vs.

24 Trial Date: Vacated

25 GERALD ARMSTRONG; DOES 1 through 25,)
26 inclusive,)

27 Defendants.)
28

29
30 On October 6, 1995, the Court granted the motion of Plaintiff
31 made under Code of Civil Procedure §437(c) on the ground that there
32 is no defense to the action, and that judgment be entered for
33 Plaintiff and against Defendants on the 13th, 16th, 17th and 19th
34 causes of action of the Second Amended Complaint.

35 On January 27, 1995, the Court granted the motion of Plaintiff
36 made under Code of Civil Procedure §437(c) on the ground that there
37 was no defense to the action, for an order that judgment be entered
38 for Plaintiff and against Defendants on the 4th and 6th causes of

WILSON, RYAN & CAMPILONGO
115 Sansome Street, Suite 400
San Francisco, California 94104

1 action of the Second Amended Complaint.

2 On October 6, 1995, the Court granted the motion of Plaintiff,
3 made under Code of Civil Procedure §437(c) on the ground that there
4 was no defense to the action, for an order that a permanent
5 injunction be entered on behalf of Plaintiff and against Defendants.

6 On August 16, 1994, the Superior Court of California, County of
7 Los Angeles, in which this action was then pending, granted the
8 motion of Defendants under Code of Civil Procedure §437(c) on the
9 ground that the causes of action asserted in the 2nd and 3rd causes
10 of action on the Cross-Complaint of Gerald Armstrong, for an order
11 that judgment be entered for Defendants and against Plaintiffs on
12 said causes of action.

13 On March 7, 1996, the Court granted the motion of Cross-
14 Defendant Church of Scientology made on the Code of Civil Procedure
15 §437(c) on the ground that the action had no merit on the remaining
16 claims set forth in the Cross-Complaint of Gerald Armstrong.

17 On February 21, 1996, Plaintiff filed its Cost Bill herein,
18 seeking costs in the amount of \$334,671.75.

19 In accordance with the above orders,

20 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff shall
21 recover from Defendant the principal sum of \$300,000 plus interest
22 at the legal rate from the date of such orders in the sum of
23 \$21,923, for a total sum of \$321,923.

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment
25 of permanent injunction shall be entered against Defendant Armstrong
26 in accordance with that certain ORDER OF PERMANENT INJUNCTION signed
27 by this Court on October 17, 1995, a copy of which is attached
28 hereto as Exhibit A.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Cross-
2 Defendant shall have judgment against Cross-Complainant upon the
3 Cross-Complaint of Gerald Armstrong.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff
5 shall recover from Defendant its costs in the sum of \$334,671.75.

6
7 Dated: APRIL 29, 1996

Samuel W. Thomas
JUDGE OF THE SUPERIOR COURT

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CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

FILED
Court of Appeal - First App. Dist.

DEC 23 1997

RON D. BARROW, CLERK
By DEPUTY

CHURCH OF SCIENTOLOGY INTERNATIONAL,
Respondent,
v.
GERALD ARMSTRONG,
Appellant.

A075027
Marin County No. 157680

BY THE COURT:

The request to file a late opposition to the motion to dismiss is granted and the December 17, 1997 opposition is accepted for filing.

The motion to dismiss the appeal is granted. The appeal is hereby dismissed.

Date: DEC 23 1997

HANLON, P.J.

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GEORGE W. ABBOTT, CHTD.
Nevada Bar No. 2178
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(702) 782-8362 (fax)

*Erring -
I didn't make
a copy of the
remainder of
this Complaint*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GERALD ARMSTRONG,

CV-N-97-00670-HDM (RAM)

Plaintiff,

vs.

COMPLAINT FOR LIBEL
AND DEFAMATION, AND
FOR OTHER RELIEF

DAVID MISCAVIGE and CATHY
NORMAN, individuals; CHURCH
OF SCIENTOLOGY INTERNATIONAL,
a California corporation; the
RELIGIOUS TECHNOLOGY CENTER,
a California corporation; the
SEA ORGANIZATION, a California
based unincorporated entity;
and the CHURCH OF SCIENTOLOGY
OF TEXAS, a Texas corporation;

JURY DEMAND

Defendants.

Plaintiff, Gerald Armstrong, alleges as follows:

JURISDICTION AND VENUE

1. Subject matter jurisdiction resides in this Court pursuant to 28 U.S.C.A. § 1332, as plaintiff is a resident of Nevada, and defendants are residents of California or of Texas.

2. The amount in controversy exceeds Seventy-five Thousand Dollars (\$75,000), exclusive of interest and costs.

A

U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED

10 1998

CLERK, U.S. DISTRICT COURT

BY DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

FILED

JUL-9 AM 10:38

LANCE S. WILSON
CLERK

BY DEPUTY

GERALD ARMSTRONG,

VS.

DAVID MISCAVIGE, et al.,

CV-N-97-670-ECR (RAM)

MINUTES OF THE COURT

DATE: July 8, 1998

PRESENT: EDWARD C. REED, JR. U.S. District Judge

Deputy Clerk: WAYNE JULIAN Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

IT IS HEREBY ORDERED that Defendants' motion (#13) to dismiss for lack of personal jurisdiction is GRANTED, and Defendants Church of Scientology of Texas and Cathy Norman are DISMISSED.

I. Background

Plaintiff was formerly a member of the Church of Scientology, but left the church and has allegedly suffered post-departure retaliation at the Church's hands. In October 1996 Defendant Cathy Norman, a resident of Texas and member of Defendant Church of Scientology of Texas, mailed a letter (#1, Ex. A) to another church member in Alabama, which letter allegedly defamed Plaintiff. Plaintiff was living in California at the time. Compl. at ¶ 22 (#1). Plaintiff sued Ms. Norman and the Church of Scientology of Texas, as well as other parties, in November 1997 for defamation and intentional infliction of emotional distress.

II. Subject Matter Jurisdiction

The asserted basis for our subject matter jurisdiction is diversity of citizenship. Plaintiff bears the burden of demonstrating subject matter jurisdiction. Lew v. Moss, 797 F.2d 747, 751 (9th Cir. 1986). In this case, Plaintiff claims to have been a citizen of Nevada at the time he filed suit. Id. at 750 (citizenship is determined at time of filing). A U.S. citizen is a citizen of a state for diversity purposes if he is domiciled there; that is, if he has established a fixed habitation or abode in a particular place, and intends to remain there permanently or indefinitely. Id. at 749-50. Physical presence is a central and ordinarily necessary factor in determining domicile, and where a party has recently moved, physical presence in the new state is required to effectuate a change in domicile. Id.; Hendrix v. Naphtal, 971 F.2d 398, 400 n.2 (9th Cir. 1992).

40
B

In this case, the evidence of domicile is hotly disputed, but all Plaintiff need demonstrate at this stage is that a genuine issue of material fact exists regarding subject matter jurisdiction. Lew, 797 F.2d at 751; see Wilson v. A.H. Belo Corp., 87 F.3d 393, 396 (9th Cir. 1996). Although Defendants assert that Plaintiff is domiciled in California, and offer considerable evidence that he has been living in British Columbia since no later than December 1997, Mr. Armstrong's declaration states that he works in Nevada, possesses a Nevada driver's license, and keeps his personal property in Nevada. Compare Armstrong Decl. (#10, Ex. H) with Armstrong Decl. at ¶ 9 (#21). He also states that he "stays" in Nevada, and has done so since November 1997 (when he filed the present action), but is afraid of specifying his address because he fears Defendants' retaliation. Armstrong Decl. at 21 (#21). There exists a genuine issue of material fact regarding Plaintiff's citizenship, and because Defendants are admittedly citizens of either California or Texas, complete diversity exists and we possess jurisdiction.

III. Personal Jurisdiction

A federal court sitting in diversity applies the law of the forum state when deciding issues of personal jurisdiction. Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1484 (9th Cir. 1993). This case was brought in Nevada; however, because Nevada's long-arm statute allows courts to exercise personal jurisdiction over defendants to the maximum extent permitted by the Due Process Clause of the United States Constitution, personal jurisdiction in this case must simply meet the requirements of due process. Firouzabadi v. First Judicial District Court, 885 P.2d 616, 619 (1994) (construing Nev. Rev. Stat. Ann. § 14.065). Moreover, when the jurisdictional issue is decided without a full evidentiary hearing, the plaintiff need only make out a prima facie showing of jurisdiction. Firouzabadi, 885 P.2d at 618-19; Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir. 1995). That is, the plaintiff must allege facts which, if true, would support jurisdiction over the defendant. Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).

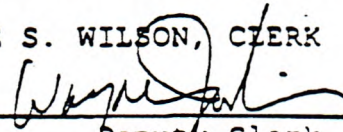
Personal jurisdiction may be general or specific. General personal jurisdiction exists where "the defendant's activities in the forum state are so substantial or continuous and systematic that it may be deemed present in the forum and hence subject to suit over claims unrelated to its activities there." Firouzabadi, 885 P.2d at 619; Gordy v. Daily News, L.P., 95 F.3d 829, 836 (9th Cir. 1996). In this case there is no evidence that either moving Defendant has any connections whatsoever with Nevada, either as alleged in the Complaint or in Plaintiff's Opposition.

As for specific jurisdiction, one requirement is that the "defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws." Core-Vent, 11 F.3d at 1485; see Trump v. District Court, 857 P.2d 740, 747-50 (1993). Ms. Norman's letter plainly fails to meet this requirement, nor does Plaintiff even attempt to explain how it could meet this requirement: the letter was

neither sent to Nevada nor mailed from Nevada, Plaintiff did not live in Nevada at the time he received a copy of the letter, and Plaintiff has not alleged any reputational harm suffered in Nevada. Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998). (discussing "purposeful availment"). This is not sufficient to grant us specific jurisdiction.

LANCE S. WILSON, CLERK

By


Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GERALD ARMSTRONG,

Plaintiff,

V.

DAVID MISCAVIGE , et al.,

Defendants.

CV-N-97-670-ECR (RAM)

BY
DEPUTY

LANCE S. WILSON
CLERK

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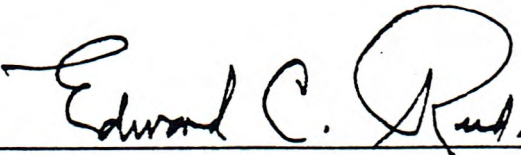
ORDER OF DISMISSAL WITHOUT PREJUDICE
PURSUANT TO RULE 4(m) FEDERAL RULES OF CIVIL PROCEDURE

Counsel for GERALD ARMSTRONG having failed to show good
cause why this action should not be dismissed without prejudice
for failure to effect timely service pursuant to FRCP 4(m),

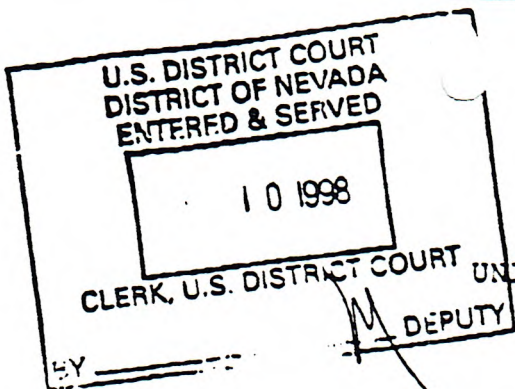
IT IS ORDERED that the action is hereby dismissed without
prejudice as to: Miscavige and SEA Organization.

Dated:

July 14, 1998.



EDWARD C. REED., JR.
UNITED STATES DISTRICT JUDGE



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LANCE S. WILSON
CLERK
BY [Signature]
DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

GERALD ARMSTRONG,) CV-N-97-670-ECR (RAM)
VS.) MINUTES OF THE COURT
DAVID MISCAVIGE, et al.,) DATE: July 9, 1998

PRESENT: EDWARD C. REED, JR. U.S. District Judge
Deputy Clerk: WAYNE JULIAN Reporter: NONE APPEARING
Counsel for Plaintiff(s) NONE APPEARING
Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

IT IS HEREBY ORDERED that the motions (#9, #10) to dismiss filed by Defendants Church of Scientology International and Religious Technology Center, to the extent they seek dismissal for lack of personal jurisdiction, improper venue, and fugitive disentitlement, are DENIED.

I. Background

Plaintiff was formerly a member of the Church of Scientology, but left the church and has allegedly suffered retaliation at the Church's hands. In October 1996 Defendant Cathy Norman, a resident of Texas and member of Defendant Church of Scientology of Texas, mailed a letter (#1, Ex. A) to another church member in Alabama, which letter allegedly defamed Plaintiff. Plaintiff was living in California at the time. Compl. at ¶ 22 (#1). Plaintiff sued Ms. Norman and the Church of Scientology of Texas in November 1997 for defamation and intentional infliction of emotional distress, adding as Defendants the Church of Scientology International ("CSI"), the mother church, and Religious Technology Center ("RTC"), owner of the Church's intellectual property.

II. Personal Jurisdiction

A federal court sitting in diversity applies the law of the forum state when deciding issues of personal jurisdiction. Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1484 (9th Cir. 1993). This case was brought in Nevada; however, because Nevada's long-arm statute allows courts to exercise personal jurisdiction over defendants to the maximum extent permitted by the Due Process Clause of the United States Constitution, personal jurisdiction in this case must simply meet the requirements of due process. Firouzabadi v. First Judicial District Court, 885 P.2d 616, 619 (1994) (construing Nev. Rev. Stat. Ann. § 14.065). Moreover, when the jurisdictional issue is

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decided without a full evidentiary hearing, the plaintiff need only make out a prima facie showing of jurisdiction. Firouzabadi, 885 P.2d at 618-19; Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir. 1995).

Personal jurisdiction may be general or specific. As for specific jurisdiction, one requirement is that the "defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws." Core-Vent, 11 F.3d at 1485; see Trump v. District Court, 857 P.2d 740, 747-50 (1993). Ms. Norman's letter plainly fails to meet this requirement, nor does Plaintiff even attempt to explain how it could meet this requirement: the letter was neither sent to Nevada nor mailed from Nevada, Plaintiff did not live in Nevada at the time he received a copy of the letter, and Plaintiff has not alleged any reputational harm suffered in Nevada. Panavision Int'l, L.P. v. Toepfen, 141 F.3d 1316, 1321 (9th Cir. 1998) (discussing "purposeful availment"). This is not sufficient to grant us specific jurisdiction; indeed, Plaintiff's Opposition (#20) does not explicitly claim specific jurisdiction.

Instead, Plaintiff claims general jurisdiction. General personal jurisdiction exists where "the defendant's activities in the forum state are so substantial or continuous and systematic that it may be deemed present in the forum and hence subject to suit over claims unrelated to its activities there." Firouzabadi, 885 P.2d at 619; Gordy v. Daily News, L.P., 95 F.3d 829, 836 (9th Cir. 1996). It is undisputed that neither CSI nor RTC are located in Nevada or otherwise have any facilities or offices in Nevada. Plaintiff's basis for general jurisdiction is instead that these two organizations are the alter egos of the Nevada branch of the Church of Scientology. Compl. at ¶ 6 (#1).

The procedure for assessing personal jurisdiction on an alter ego basis before trial, where supporting affidavits have been submitted, is outlined in AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir. 1996): the affidavits must make a prima facie showing of personal jurisdiction, and the evidence must be viewed in a light most favorable to the party seeking jurisdiction. In this case Mr. Armstrong's Declaration (#21 at ¶ 32) is sufficient to establish continuous and systematic contacts by CSI as alter ego of the Church of Scientology of Nevada ("CSN") (located in Las Vegas). Specifically, CSN is a "lower level franchise" controlled by CSI, CSI management personnel have continual contact with CSN personnel and control CSN's activities, CSI missionaries travel to Nevada and have the authority to issue orders to CSN and enforce compliance with those orders, and CSI controls the staff changes and finances of CSN (and every other CSI franchise). This is sufficient to make out a prima facie case for "unity of interest and ownership," beyond the "normal parent-subsidiary relationship," necessary to establish "alter ego" jurisdiction over CSI. Id. at 591. The assertions regarding Defendant RTC are to the same effect. Armstrong Decl. at ¶ 36 (#21).

III. Improper Venue

Because we possess personal jurisdiction over Defendants, venue is proper in Nevada. 28 U.S.C. § 1391(c).

IV. Fugitive Disentitlement

It may be true that Plaintiff sued in Nevada because he has an outstanding bench warrant in California, but Defendants offer no authority for the proposition that this alone disentitles him from maintaining a separate action in this District, nor have we found any such authority.

V. Subject Matter Jurisdiction

The asserted basis for our subject matter jurisdiction is diversity of citizenship. Plaintiff bears the burden of demonstrating subject matter jurisdiction. Lew v. Moss, 797 F.2d 747, 751 (9th Cir. 1986). In this case, Plaintiff claims to have been a citizen of Nevada at the time he filed suit. Id. at 750 (citizenship is determined at time of filing). A U.S. citizen is a citizen of a state for diversity purposes if he is domiciled there; that is, if he has established a fixed habitation or abode in a particular place, and intends to remain there permanently or indefinitely. Id. at 749-50. Physical presence is a central and ordinarily necessary factor in determining domicile. Hendrix v. Naphtal, 971 F.2d 398, 400 n.2 (9th Cir. 1992). Where a party has recently moved, physical presence in the new state is required to effectuate a change in domicile and a person's established domicile is the presumptive one until a new one is acquired. Lew, 797 F.2d at 750-51. Additionally, a U.S. citizen domiciled outside the United States may not maintain a diversity action. Brady v. Brown, 51 F.3d 810, 815 (9th Cir. 1995).

Plaintiff does not dispute that until November 1997 he was domiciled in California. Mr. Armstrong must therefore demonstrate a physical presence in Nevada as of November 24, 1997, as well as a fixed habitation or abode in Nevada and an intent to remain here permanently, sufficient to overcome the presumption that he was then domiciled in California. Although Defendants assert that Plaintiff is still legally domiciled in California, and offer considerable evidence that he has been living in British Columbia since no later than December 1997, Mr. Armstrong's declaration states that he works in Nevada, possesses a Nevada driver's license, and keeps his personal property in Nevada. Compare Armstrong Decl. (#10, Ex. H) with Armstrong Decl. at ¶ 9 (#21). He also states that he "stays" in Nevada, and has done so since November 1997, but is afraid of specifying his address because he fears Defendants' retaliation. Armstrong Decl. at 21 (#21).

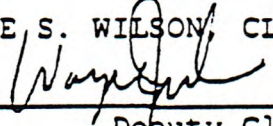
Since the threshold question in any federal lawsuit is our subject matter jurisdiction, we will set an evidentiary hearing to resolve the disputed issues of material fact outlined above.

IT IS FURTHER ORDERED that decision on Defendants' motions (#9, #10), to the extent they seek dismissal for lack of subject matter jurisdiction, are DEFERRED pending an evidentiary hearing.

IT IS FURTHER ORDERED that an evidentiary hearing is set for Tuesday, August 18, 1998, at 10:00 am, to consider the Court's subject matter jurisdiction in this case. Plaintiff shall have two hours, and Defendants shall jointly have two hours, to present evidence, testimony, and argument.

LANCE S. WILSON, CLERK

By



Deputy Clerk